

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River,
A Tributary of the Pacific Ocean

In Re

WATERS OF THE KLAMATH RIVER BASIN.

Case No. WA1300001

CASE MANAGEMENT ORDER
#50 SEEKING COMMENTS ON PROPOSED
PHASE 3, PART 2, ORDER

July ST31, 2020

This Case Management Order (CMO) #50 will be mailed to those listed on the current service list provided by the Court on June 18, 2020.

Attached as Exhibit A to this Order is the *Proposed* CASE MANAGEMENT ORDER # ___, SCHEDULE FOR BRIEFING AND ARGUING PHASE 3, PART 2. Exhibit A was created and submitted by the Case Management Committee (CMC) with several minor changes made by the court. The Court invites all parties to submit comments on Exhibit A according to the schedule set forth below.

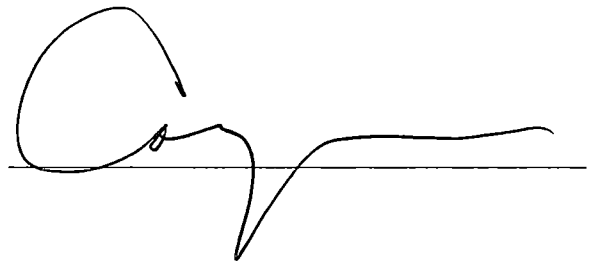
All written comments on Exhibit A must be filed not later than September 14, 2020.



All written responses to comments on Exhibit A must be filed not later than October 12, 2020.

After considering any written comments and responses, the Court will issue a CASE MANAGEMENT ORDER for the SCHEDULE FOR BRIEFING AND ARGUING PHASE 3, PART 2.

Dated this 31ST day of July, 2020.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small flourish.

Cc: current service list

EXHIBIT A

****PROPOSED COPY ONLY****

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FOR THE COUNTY OF KLAMATH

In the Matter of the Determination of the Relative Rights of the Waters of the Klamath River,
A Tributary of the Pacific Ocean

In Re

WATERS OF THE KLAMATH RIVER BASIN

Case No. WA1300001

*PROPOSED CASE MANAGEMENT ORDER
#____; SCHEDULE FOR BRIEFING AND
ARGUING PHASE 3, PART 2.*

August , 2020

I. Introduction

In CMO #46, the Court directed the Case Management Committee (CMC) to “submit a proposed CMO to the Court setting forth a schedule for briefing and arguing the next part of this proceeding.”

On June 26, 2020, the CMC chair transmitted a proposed order to the Court and notified the Court that the proposed order reflected the committee consensus.

On _____, 2020, the Court circulated the CMC’s proposed Case Management Order to the then-current service list, and solicited feedback as follows: [].

Having reviewed the feedback received, the Court enters the below order.

II. Motions to Present Non-Record Evidence for Phase 3, Part 2

Pursuant to the Court’s prior Order on Phase 1B Motions (entered August 31, 2017):

Non-record evidence may be taken for good cause shown which will be determined on a case by case basis. The guidelines in the first sentence of ORS 183.482(5) apply when determining if good cause exists.

For each claim in this Adjudication that is subject to exceptions, all claimants and exceptors must file and serve any motions or cross-motions to present non-record evidence, and the scope of the proposed non-record evidence, in the upcoming Phase 3 Part 2 hearings, as follows:

A. For motions on non-tribal claims (Phase 3, Part 1, Groups A and B claims):

- i. Opening Motions due: **November 6, 2020**;
- ii. Cross-Motions (limited to claims where an Opening Motion was filed, and as a result the claimant or an exceptor also wishes to move to present non-record evidence that goes beyond rebuttal evidence) due: **November 27, 2020**;
- iii. Responses in Opposition to Motions and Cross-Motions due: **December 18, 2020**;
- iv. Replies in Support of Motions and Cross-Motions due: **January 8, 2021**;
- v. Telephone status conference to discuss oral argument scheduling set for **January 15, 2021**;
- vi. Oral Argument set for **January 22, 2021**.

B. For motions on tribal claims (Phase 3, Part 1, Group C claims):

- i. Opening Motions due: TBD (approximately sixty days after issuance of the Court's letter opinion on the Group C legal motions, as scheduled by the Court;
- ii. Cross-Motions due: TBD (approximately 21 days after Opening Motions due) (limited to claims where an Opening Motion was filed, and as a result the claimant or an exceptor also wishes to move to present non-record evidence that goes beyond rebuttal evidence);
- iii. Responses in Opposition due: TBD (approximately 30 days after Cross-Motions due);
- iv. Replies due: TBD (approximately 21 days after Responses in Opposition);

- v. Telephone status conference to discuss oral argument scheduling: TBD; and
- vi. Oral Argument: TBD (approximately 14 days after telephone status conference).

Pursuant to the Court's prior Order on Phase 1B Motions, "if the court determines that further testimony is necessary, it will be taken by the director or a referee." If any motions or cross-motions are granted for presenting non-record evidence, all proceedings on remand will happen in the same manner. The court has not specified that manner at this time. Motions or Cross-Motions for non-record evidence should indicate the movant's position on the appropriate venue for taking any new evidence. Any party with unresolved claims or exceptions and OWRD may respond regarding the appropriate venue, as the court's ruling on venue will also apply to any new evidence that is allowed on any remanded Tribal claims, which motions are to be addressed at a subsequent time. If multiple motions for new evidence are filed, responding parties may file individual responses or a single, consolidated response to the portions of such motions regarding the appropriate venue.

To the extent the Court grants a motion and/or cross-motion to present non-record evidence, rebuttal evidence shall be allowed as a matter of course without the necessity of filing a cross-motion. If no motion or cross-motion to present non-record evidence is timely filed in relation to a particular claim, then the claim will be set for a hearing before the Court on the existing record for the claim transmitted to the Court by OWRD. A subsequent order or orders of this Court will set forth the hearing schedules for the claims to be heard on the record.

III. Phase 3, Part 2 Issue: Resolution of Claims Not Subject to Exceptions

Phase 3, Part 2 is intended to address the issue of the resolution of claims not subject to exceptions. The Court's Order on Phase 1A Motions A, B and C (entered on December 15, 2016), determined that the Court lacks authority to issue a partial judgment. However, the Court declined to determine at that same time a proposed alternative to Motion A (seeking an order as opposed to a judgment). While a judgment cannot be issued at this time, the Court plans to issue an order, pursuant to ORCP 67A, affirming the claims that did not have exceptions filed, or that

1 had exceptions filed, but which exceptions have subsequently been withdrawn or resolved.
2 OWRD shall prepare a list of those claims and submit a proposed order. Parties will have an
3 opportunity to file any objections to this form of order.

4 **IV. Telephone status conference to discuss oral argument scheduling**

5 In preparation for the oral argument date set in Section II.A of this proposed order, the
6 Court will convene a telephone status conference to discuss the particulars of the order and
7 timing of arguments on **January 15, 2021**. Any party who has filed a motion, cross-motion, or
8 response pursuant to this Case Management Order must participate, and any other party may
9 participate. The call-in information is as follows:

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12 Dated this _____ day of _____, 2020

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